No. 09-324

Supreme Court, U.S.
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In The

Supreme Court of the United States

JUDY A. WILEY,

Petitioner,

v.

HENRY M. PAULSON, JR. ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR REHEARING

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Petitioner respectfully moves this Court for an Order (1) vacating its Order of October 13, 2009 which denied the Petition for Writ of Certiorari filed by Petitioner on September 11, 2009 and (2) Granting the Petition for Writ of Certiorari. The grounds for rehearing are stated below.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves United States Constitutional Amendment [Article XIV] (1868) all persons born or Naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the Privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

2. 28 U.S.C.A. § 1654, 2.3(2) Appearance personally or by counsel in all courts of the United States the parties may plead and conduct their own cases personally or by counsel as by the rules of such courts, respectively are permitted to manage and conduct causes therein. § 2.3(2). Not for another: A non-attorney cannot represent someone else pro-se.

REASONS FOR GRANTING REHEARING

1. The Texas Supreme Court has promulgated rules allowing others to practice law. That power is limited to the practice by (1) attorney licensed in foreign Jurisdictions, (2) bonafide law students, and (3) unlicensed graduate students who attend or attended a law school approved by the Supreme Court of Texas.

2. Thus, by allowing Mr. Newton (friend of plaintiff) to appear before the Administrative Judge in the capacity as petitioner's legal representative in connection with her EEOC Administrative hearing is a miscarriage of justice and strikes any and all oral settlement agreement that would or could become binding as a result of his actions. Mr. Newton clearly engaged in the unauthorized practice of law and did not hold himself out to be an attorney, or a person within the categories for whom the Texas Supreme Court has promulgated rules allowing a limited practice of law. (See *Jimison by Parker v. Mann*, 957 S.W. 2d 860 (Tex. App. Amarillo 1997).

3. Moreover, Judge Merkel did not request the qualifications of Mr. Newton and his authority to represent petitioner during the EEOC Administrative Hearing, in that she had inherent Powers to inquire into the qualifications of those persons practicing law before the Court and did not do so. When considered against the back ground of petitioner's limited formal education, her lack of legal experience and the ambiguous circumstances under which Mr. Newton's

oral settlement agreement has operated to vitiate petitioner's claim of Employment Discrimination, is the effects of EEOC erroneous practice upon employment discrimination claimants. (See *Crawford v. Western Electric Co. Inc.*, 614 F.2d 1300, 1308 (5th Cir. 1980)).

4. Evidence of unauthorized practice of law or other improper conduct require a finding that the oral settlement was not the product of a knowing and voluntary waiver of petitioner's claim, but must be stricken from the records.

Furthermore, Mr. Newton was never authorized to practice law. Mr. Newton never submitted an application for general admission to practice law before a Federal Court. Mr. Newton was never scrutinized as to his qualifications to represent plaintiff Ms. Wiley in the EEOC administrative proceedings. Accordingly, the settlement agreement in this EEOC matter must be stricken. The Judgment of the 5th Circuit Court of Appeals must be reversed and this case remanded back to the Federal District Court for further proceedings. (Citing *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003); *Magaha v. Holmes*, 886 S.W. 2d 447 (Tex. App. – Houston [1st Dist.] 1994)).

There exists, the existence of a conflict between two Federal Circuit Courts of Appeal by which review is sought against the defendants in their individual capacity.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition for Writ of Certiorari, Petitioner prays that this Court grant rehearing of the Order of Denial, vacate the Order of Denial, and grant the Petition for Writ of Certiorari.

Dated: November 6, 2009

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

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Judy A. Wiley, *Pro Se*